

1 Rudolph A. Telscher, Jr.*
rudy.telscher@huschblackwell.com
2 Kara R. Fussner*
kara.fussner@huschblackwell.com
3 Erin D. Knese*
erin.knese@huschblackwell.com
4 HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
5 St. Louis, MO 63105
314-480-1500 Telephone
6 314-480-1505 Facsimile
*Pro Hac Vice

7 and

8 Ben M. Davidson (CA Bar No. 181464)
ben@dlgla.com
9 DAVIDSON LAW GROUP, ALC
4500 Park Granada Blvd., Suite 202
10 Calabasas, CA 91302
310-473-2300 Telephone
11 310-473-2941 Facsimile

12 *Attorneys for Plaintiff/Counterclaim Defendant*
13 *Chameleon Chairs LLC*

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION – LOS ANGELES**

17 CHAMELEON CHAIRS LLC,

18 *Plaintiff/Counterclaim*
19 *Defendant,*

20 v.

21 THEONI, INC.,

22 *Defendant/Counterclaim*
23 *Plaintiff.*

Case No.: 2:18-cv-06816-AB-SSx

**STIPULATED PROTECTIVE
ORDER**

District Judge: Hon. André Birotte Jr.

Magistrate Judge:
Hon. Suzanne H. Segal

24 **A. PURPOSES AND LIMITATIONS**

25 Discovery in this action is likely to involve production of confidential,
26 proprietary, or private information for which special protection from public
27 disclosure and from use for any purpose other than prosecuting this litigation
28

1 may be warranted. Accordingly, the parties hereby stipulate to and petition
2 the Court to enter the following Stipulated Protective Order. The parties
3 acknowledge that this Order does not confer blanket protections on all
4 disclosures or responses to discovery and that the protection it affords from
5 public disclosure and use extends only to the limited information or items
6 that are entitled to confidential treatment under the applicable legal
7 principles. The parties further acknowledge, as set forth in Section 12.3,
8 below, that this Stipulated Protective Order does not entitle them to file
9 confidential information under seal; Civil Local Rule 79-5 sets forth the
10 procedures that must be followed and the standards that will be applied when
11 a party seeks permission from the court to file material under seal.

12
13 **B. GOOD CAUSE STATEMENT**

14 This action, which involves two competitors in the rental chair industry
15 with a plaintiff alleging patent infringement for at least one product, is likely
16 to involve trade secrets, customer and pricing lists and other valuable
17 research, development, commercial, financial, technical and/or proprietary
18 information for which special protection from public disclosure and from use
19 for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development,
23 or commercial information (including information implicating privacy rights
24 of third parties), information otherwise generally unavailable to the public, or
25 which may be privileged or otherwise protected from disclosure under state or
26 federal statutes, court rules, case decisions, or common law. Accordingly, to
27 expedite the flow of information, to facilitate the prompt resolution of
28 disputes over confidentiality of discovery materials, to adequately protect

1 information the parties are entitled to keep confidential, to ensure that the
2 parties are permitted reasonable necessary uses of such material in preparation
3 for and in the conduct of trial, to address their handling at the end of the
4 litigation, and serve the ends of justice, a protective order for such
5 information is justified in this matter. It is the intent of the parties that
6 information will not be designated as “Confidential” or “Highly Confidential -
7 Attorneys Eyes Only” for tactical reasons and that nothing be so designated
8 without a good faith belief that it has been maintained in a confidential, non-
9 public manner, and there is good cause why it should not be part of the public
10 record of this case.

11 12 2. DEFINITIONS

13 2.1 Action: this pending federal law suit, Chameleon Chairs,
14 LLC. V. Theoni, Inc., Case No. 2:18-cv-06816-AB-SSx.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless
18 of how it is generated, stored or maintained) or tangible things that qualify
19 for protection under Federal Rule of Civil Procedure 26(c), and as specified
20 above in the Good Cause Statement.

21 2.4 Counsel (without qualifier): Outside Counsel of Record, House
22 Counsel, and Counsel representing a Party and assisting or consulting in
23 connection with this Action (as well as their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates
25 information or items that it produces in disclosures or in responses to
26 discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
27 ATTORNEYS EYES ONLY.”
28

1 2.6 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner in which it is generated, stored, or
3 maintained (including, among other things, testimony, transcripts, and
4 tangible things), that are produced or generated in disclosures or responses to
5 discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its
8 counsel to serve as an expert witness or as a consultant in this Action.

9 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 Information or Items: extremely sensitive “Confidential Information or
11 Items,” disclosure of which to another Party or Non-Party would create a
12 substantial risk of serious harm that could not be avoided by less restrictive
13 means.

14 2.9 House Counsel: attorneys who are employees of a party to this
15 Action. House Counsel does not include Outside Counsel of Record or any
16 other outside counsel.

17 2.10 Non-Party: any natural person, partnership, corporation,
18 association, or other legal entity not named as a Party to this action.

19 2.11 Outside Counsel of Record: attorneys who are not employees of a
20 party to this Action but are retained to represent or advise a party to this
21 Action and have appeared in this Action on behalf of that party or are
22 affiliated with a law firm which has appeared on behalf of that party, and
23 includes support staff.

24 2.12 Party: any party to this Action, including all of its officers,
25 directors, employees, consultants, retained experts, and Outside Counsel of
26 Record (and their support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this Action.

1 2.14 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing
3 exhibits or demonstrations, and organizing, storing, or retrieving data in any
4 form or medium) and their employees and subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS EYES ONLY.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected
17 Material. However, the protections conferred by this Stipulation and Order
18 do not cover the following information: (a) any information that is in the
19 public domain at the time of disclosure to a Receiving Party or becomes part
20 of the public domain after its disclosure to a Receiving Party as a result of
21 publication not involving a violation of this Order, including becoming part
22 of the public record through trial or otherwise; and (b) any information
23 known to the Receiving Party prior to the disclosure or obtained by the
24 Receiving Party after the disclosure from a source who obtained the
25 information lawfully and under no obligation of confidentiality to the
26 Designating Party.

27 Any use of Protected Material at trial shall be governed by the orders
28 of the trial judge. This Order does not govern the use of Protected Material at

1 trial.

2
3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality
5 obligations imposed by this Order shall remain in effect until a Designating
6 Party agrees otherwise in writing or a court order otherwise directs. Final
7 disposition shall be deemed to be the later of (1) dismissal of all claims and
8 defenses in this Action, with or without prejudice; and (2) final judgment
9 herein after the completion and exhaustion of all appeals, rehearings,
10 remands, trials, or reviews of this Action, including the time limits for filing
11 any motions or applications for extension of time pursuant to applicable law.
12

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for
15 Protection. Each Party or Non-Party that designates information or items for
16 protection under this Order must take care to limit any such designation to
17 specific material that qualifies under the appropriate standards. To the extent
18 that it is practical to do so, the Designating Party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify so that other portions of the material,
21 documents, items, or communications for which protection is not warranted
22 are not swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited.
24 Designations that are shown to be clearly unjustified or that have been made
25 for an improper purpose (e.g., to unnecessarily encumber the case
26 development process or to impose unnecessary expenses and burdens on
27 other parties) may expose the Designating Party to sanctions.
28

1 If it comes to a Designating Party's attention that information or items
2 that it designated for protection do not qualify for protection at all or do not
3 qualify for the level of protection initially asserted, that Designating Party
4 must promptly notify all other Parties that it is withdrawing the inapplicable
5 designation.

6 5.2 Manner and Timing of Designations. Except as otherwise
7 provided in this Order (see, e.g., second paragraph of section 5.2(a) below),
8 or as otherwise stipulated or ordered, Disclosure or Discovery Material that
9 qualifies for protection under this Order must be clearly so designated before
10 the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix at a minimum, the legend
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS EYES
16 ONLY," to each page that contains protected material. If only a portion or
17 portions of the material on a page qualifies for protection, the Producing
18 Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 A Party or Non-Party that makes original documents or materials
21 available for inspection need not designate them for protection until after the
22 inspecting Party has indicated which documents or material it would like
23 copied and produced. During the inspection and before the designation, all of
24 the material made available for inspection shall be deemed "HIGHLY
25 CONFIDENTIAL – ATTORNEYS EYES ONLY." After the inspecting
26 Party has identified the documents it wants copied and produced, the
27 Producing Party must determine which documents, or portions thereof,
28 qualify for protection under this Order. Then, before producing the specified

1 documents, the Producing Party must affix the appropriate legend
2 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS
3 EYES ONLY”) to each page that contains Protected Material. If only a
4 portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by
6 making appropriate markings in the margins).

7 (b) for testimony given in depositions or in other pretrial or trial
8 proceedings, that the Designating Party identify on the record, before the
9 close of the deposition.

10 (c) for information produced in some form other than documentary
11 and for any other tangible items, that the Producing Party affix in a
12 prominent place on the exterior of the container or containers in which the
13 information is stored the legend “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or
15 portions of the information warrants protection, the Producing Party, to the
16 extent practicable, shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an
18 inadvertent failure to designate qualified information or items does not,
19 standing alone, waive the Designating Party’s right to secure protection
20 under this Order for such material. Upon timely correction of a designation,
21 the Receiving Party must make reasonable efforts to assure that the material
22 is treated in accordance with the provisions of this Order.

23 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may
26 challenge a designation of confidentiality at any time that is consistent
27 with the Court’s Scheduling Order.

28 6.2 Meet and Confer. The Challenging Party shall initiate the

1 dispute resolution process under Local Rule 37.1 et seq.

2 6.3 The burden of persuasion in any such challenge proceeding
3 shall be on the Designating Party. Frivolous challenges, and those made for
4 an improper purpose (e.g., to harass or impose unnecessary expenses and
5 burdens on other parties) may expose the Challenging Party to sanctions.
6 Unless the Designating Party has waived or withdrawn the confidentiality
7 designation by failing to file a motion to retain confidentiality as described
8 above, all parties shall continue to afford the material in question the level
9 of protection to which it is entitled under the Designating Party's
10 designation until the Court rules on the challenge.
11

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material
14 that is disclosed or produced by another Party or by a Non-Party in
15 connection with this Action only for prosecuting, defending, or attempting to
16 settle this Action. Such Protected Material may be disclosed only to the
17 categories of persons and under the conditions described in this Order. When
18 the Action has been terminated, a Receiving Party must comply with the
19 provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party
21 at a location and in a secure manner that ensures that access is limited to the
22 persons authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating
25 Party, a Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:
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1 (a) the Receiving Party's Outside Counsel of Record in this
2 Action, as well as employees of said Outside Counsel of Record to whom it
3 is reasonably necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including Counsel) of
5 the Receiving Party to whom disclosure is reasonably necessary for this
6 Action;

7 (c) Experts (as defined in this Order) of the Receiving Party to
8 whom disclosure is reasonably necessary for this Action and who have
9 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

12 (f) professional jury or trial consultants, mock jurors, and
13 Professional Vendors to whom disclosure is reasonably necessary for this
14 Action and who have signed the "Acknowledgment and Agreement to Be
15 Bound" (Exhibit A);

16 (g) the author, addressee, or carbon copy recipient of a document
17 containing the information or a custodian or other person who otherwise
18 possessed or knew the information;

19 (h) during their depositions, witnesses ,and attorneys for witnesses,
20 in the Action to whom disclosure is reasonably necessary provided: (1) the
21 deposing party requests that the witness sign the form attached as Exhibit 1
22 hereto; and (2) they will not be permitted to keep any confidential
23 information unless they sign the "Acknowledgment and Agreement to Be
24 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
25 ordered by the court. Pages of transcribed deposition testimony or exhibits to
26 depositions that reveal Protected Material may be separately bound by the
27 court reporter and may not be disclosed to anyone except as permitted under
28 this Stipulated Protective Order; and

1 (i) any mediator or settlement officer, and their supporting
2 personnel, mutually agreed upon by any of the parties engaged in settlement
3 discussions.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’
5 EYES ONLY” Information or Items. Unless otherwise ordered by the court
6 or permitted in writing by the Designating Party, a Receiving Party may
7 disclose any information or item designated “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as
10 well as employees of said Outside Counsel of Record to whom it is
11 reasonably necessary to disclose the information for this litigation;

12 (b) Experts of the Receiving Party (1) to whom disclosure is
13 reasonably necessary for this litigation, (2) who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to
15 whom the procedures set forth in paragraph 7.4(a)(2), below, have been
16 followed;

17 (c) the court and its personnel;

18 (d) court reporters and their staff, professional jury or trial consultants,
19 and Professional Vendors to whom disclosure is reasonably necessary for this
20 litigation and who have signed the “Acknowledgment and Agreement to Be
21 Bound” (Exhibit A); and

22 (e) the author, addressee, or carbon copy recipient of a document
23 containing the information or a custodian or other person who otherwise
24 possessed or knew the information. In addition, regardless of its designation,
25 if the document makes reference to the actual or alleged conduct or statement
26 of a person, Outside Counsel may discuss such conduct or statements with
27 such person, provided that such discussions do not disclose or reveal any
28 other Protected Material.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other
4 litigation that compels disclosure of any information or items designated in
5 this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY,” that Party must:

7 (a) promptly notify in writing the Designating Party. Such
8 notification shall include a copy of the subpoena or court order;

9 (b) promptly notify in writing the party who caused the subpoena
10 or order to issue in the other litigation that some or all of the material
11 covered by the subpoena or order is subject to this Protective Order. Such
12 notification shall include a copy of this Stipulated Protective Order; and

13 (c) cooperate with respect to all reasonable procedures sought to
14 be pursued by the Designating Party whose Protected Material may be
15 affected.

16 If the Designating Party timely seeks a protective order, the Party
17 served with the subpoena or court order shall not produce any information
18 designated in this action as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS EYES ONLY” before a determination
20 by the court from which the subpoena or order issued, unless the Party has
21 obtained the Designating Party’s permission. The Designating Party shall
22 bear the burden and expense of seeking protection in that court of its
23 confidential or highly confidential material and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in this
25 Action to disobey a lawful directive from another court.
26
27
28

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in this Action and designated as “CONFIDENTIAL” or
5 “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY.” Such
6 information produced by Non-Parties in connection with this litigation is
7 protected by the remedies and relief provided by this Order. Nothing in these
8 provisions should be construed as prohibiting a Non-Party from seeking
9 additional protections.

10 (b) In the event that a Party is required, by a valid discovery
11 request, to produce a Non-Party’s confidential or highly confidential
12 information in its possession, and the Party is subject to an agreement with
13 the Non-Party not to produce the Non-Party’s confidential or highly
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the
16 Non-Party that some or all of the information requested is subject to a
17 confidentiality agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the
19 Stipulated Protective Order in this Action, the relevant discovery request(s),
20 and a reasonably specific description of the information requested; and

21 (3) make the information requested available for inspection by
22 the Non-Party, if requested.

23 (c) If the Non-Party fails to object or seek a protective order from
24 this court within 14 days of receiving the notice and accompanying
25 information, the Receiving Party may produce the Non-Party’s confidential
26 or highly confidential information responsive to the discovery request. If the
27 Non-Party timely seeks a protective order, the Receiving Party shall not
28 produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the
2 court. Absent a court order to the contrary, the Non-Party shall bear the
3 burden and expense of seeking protection in this court of its Protected
4 Material.

5
6 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

7 If a Receiving Party learns that, by inadvertence or otherwise, it has
8 disclosed Protected Material to any person or in any circumstance not
9 authorized under this Stipulated Protective Order, the Receiving Party must
10 immediately (a) notify in writing the Designating Party of the unauthorized
11 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
12 Protected Material, (c) inform the person or persons to whom unauthorized
13 disclosures were made of all the terms of this Order, and (d) request such
14 person or persons to execute the “Acknowledgment and Agreement to Be
15 Bound” that is attached hereto as Exhibit A.

16
17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
18 OTHERWISE PROTECTED MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other
21 protection, the obligations of the Receiving Parties are those set forth in
22 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
23 to modify whatever procedure may be established in an e-discovery order
24 that provides for production without prior privilege review. Pursuant to
25 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
26 agreement on the effect of disclosure of a communication or information
27 covered by the attorney-client privilege or work product protection, the
28

1 parties may incorporate their agreement in the stipulated protective order
2 submitted to the court.

3
4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right
6 of any person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of
8 this Protective Order no Party waives any right it otherwise would have to
9 object to disclosing or producing any information or item on any ground not
10 addressed in this Stipulated Protective Order. Similarly, no Party waives any
11 right to object on any ground to use in evidence of any of the material
12 covered by this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the
14 Designating Party or a court order secured after appropriate notice to all
15 interested persons, a Party may not file in the public record in this action any
16 Protected Material. A Party that seeks to file under seal any Protected
17 Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of
19 the specific Protected Material at issue. If a Party's request to file Protected
20 Material under seal is denied by the court, then the Receiving Party may file
21 the information in the public record unless otherwise instructed by the court.

22
23 13. FINAL DISPOSITION

24 After the final disposition of this Action, as defined in paragraph 4,
25 within 60 days of a written request by the Designating Party, each Receiving
26 Party must return all Protected Material to the Producing Party or destroy
27 such material. As used in this subdivision, "all Protected Material" includes
28 all copies, abstracts, compilations, summaries, and any other format

1 reproducing or capturing any of the Protected Material. Whether the
2 Protected Material is returned or destroyed, the Receiving Party must submit
3 a written certification to the Producing Party (and, if not the same person or
4 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
5 category, where appropriate) all the Protected Material that was returned or
6 destroyed and (2) affirms that the Receiving Party has not retained any
7 copies, abstracts, compilations, summaries or any other format reproducing
8 or capturing any of the Protected Material. Notwithstanding this provision,
9 Counsel are entitled to retain an archival copy of all pleadings, motion
10 papers, trial, deposition, and hearing transcripts, legal memoranda,
11 correspondence, deposition and trial exhibits, expert reports, attorney work
12 product, and consultant and expert work product, even if such materials
13 contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set
15 forth in Section 4 (DURATION).

16
17 14. Any violation of this Order may be punished by any and all
18 appropriate measures including, without limitation, contempt proceedings
19 and/or monetary sanctions.

20
21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23 Dated: 12/17/18

24 _____
25 /S/
26 HONORABLE SUZANNE H. SEGAL
27 UNITED STATES MAGISTRATE JUDGE
28

1 Date: December 13, 2018

Respectfully submitted,

2 By: /s/ Kara R. Fussner
3 Rudolph A. Telscher, Jr.*
4 rudy.telscher@huschblackwell.com
5 Kara R. Fussner*
6 kara.fussner@huschblackwell.com
7 Erin D. Knese*
8 erin.knese@huschblackwell.com
9 HUSCH BLACKWELL LLP
10 190 Carondelet Plaza, Suite 600
11 St. Louis, MO 63105
12 314.480.1500 Telephone
13 314.480.1505 Facsimile
14 **Pro Hac Vice*

and

13 Ben M. Davidson (State Bar No. 181464)
14 DAVIDSON LAW GROUP, ALC
15 4500 Park Granada Blvd., Suite 202
16 Calabasas, CA 91302
17 310. 473.2300 Telephone
18 310. 473.2941 Facsimile
19 ben@dlgla.com

***Attorneys for Plaintiff/Counterclaim
Defendant Chameleon Chairs LLC***

19 By: /s/ Rachael D. Lamkin
20 Lamkin IP Defense
21 100 Pine Street, Suite 1250
22 San Francisco, CA 94111
23 Phone: 916.747.6091
24 Fax: 916.747.6091
25 RDL@LamkinIPDefense.com

Attorney for Defendant Theoni, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2018, I caused the foregoing to be filed electronically with the Clerk of the Court and to be served via the Court’s Electronic Filing System upon all counsel of record.

/s/ Kara R. Fussner